

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**JOHN DOE B.P.,
APPELLANT**

vs.

**CATHOLIC DIOCESE OF KANSAS CITY-ST. JOSEPH,
RESPONDENT**

DOCKET NUMBER WD76155

DATE: MARCH 11, 2014

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Ann Mesle, Judge

Appellate Judges:

Division Four: James E. Welsh, C.J., Joseph M. Ellis, J. and Larry Harman, Sp. J.

Attorneys:

Rebecca M. Randles, for Appellant

Chad E. Blomberg, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

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JOHN DOE B.P., APPELLANT

v.

CATHOLIC DIOCESE OF KANSAS CITY-ST. JOSEPH, RESPONDENT

WD76155

Jackson County, Missouri,

Before Division Four Judges: James E. Welsh, C.J., Joseph M. Ellis, J. and Larry D. Harman, Special J.

John Doe B.P. ("Appellant") appeals from the dismissal of his claims against the Catholic Diocese of Kansas City-St. Joseph ("the Diocese") in his action related to sexual abuse allegedly suffered at the hands of Father Michael Tierney when Appellant was approximately thirteen years old.

As a basis for his petition, Appellant asserted the following basic facts. In the early 1970s, Father Tierney was assigned by the Diocese to St. Elizabeth's parish in Kansas City, Missouri, where Appellant attended school and went to church. Over time, Father Tierney befriended Appellant and his family. Father Tierney would talk to Appellant in the hallways, would ask Appellant for help with various things, and took him out to eat at times. Sometime during the 1971-72 school year, Father Tierney asked Appellant to help move some things at his mother's home. While in the home of Father Tierney's mother, Father Tierney asked Appellant to go to the bedroom and, when Appellant refused, Father Tierney tackled Appellant, forcibly held him down, and fondled, caressed, and otherwise touched Appellant's chest, buttocks, anus, genitalia, and thighs. Appellant repressed the memory of that event until October 2008.

On September 29, 2010, Appellant filed his petition against Father Tierney and the Diocese. With regard to the Diocese, Appellant asserted claims of (I) childhood sexual abuse, (II) battery, (III) breach of fiduciary duty/confidential relationship, (IV) failure to supervise children, (V) intentional failure to supervise clergy, (VI) negligent supervision/retention, (VII) constructive fraud, (VIII) fraud, (IX) fraudulent misrepresentation, (X) conspiracy to commit fraud or constructive fraud, (XI) intentional infliction of emotional distress, and (XII) negligent infliction of emotional distress. Eventually, the trial court dismissed all of Appellant's claims against the Diocese.

AFFIRMED.

Division Four holds:

(1) The fact that Appellant chose to go to the house because Father Tierney was a priest does not establish, for the purposes of a intentional failure to supervise clergy claim under *Gibson v. Brewer*, 952 S.W.2d 239, 248 (Mo. banc 1997), Diocese control of the property or that Father Tierney was privileged to entered upon that property only because of his status as an employee of the Diocese.

(2) The so-called "grooming" claimed by Appellant to have occurred on Diocese property does not qualify as sexual abuse, and, as such, does not satisfy the fifth requirement of a claim for intentional failure to supervise, which requires the sexual abuse to occur on property possessed by the church. Further, none of the case law cited by Appellant supports his claim that the "grooming" activities, which were otherwise innocent and some of which occurred on property belonging to the Diocese, were inseparable from the ultimate acts of sexual abuse alleged to have occurred in the home of Father Tierney's mother.

(3) *Gibson* announced a very specific number of elements that must be established in order to establish the tort of intentional failure to supervise clergy, and the language of that case does not allow for other elements to be substituted in favor of Section 317 of the Restatement (Second) of Torts (1965). Once the elements of a cause of action have been announced by the Missouri Supreme Court, only that court may modify the elements.

(4) With regard to Appellant's fourth point, unable to discern, without resorting to speculation, exactly what ruling or rulings are being challenged or which causes of action are claimed to have been erroneously dismissed, we decline to address the point.

(5) Appellant's claim against the Diocese for negligent failure to supervise a child was properly found to have been precluded by *Gibson*.

(6) Appellant's claim that the Missouri Supreme Court improperly decided *Gibson* is not cognizable in the Missouri Court of Appeals.

Opinion by Joseph M. Ellis, Judge

Date: March 11, 2014

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